

ADDENDUM TO
RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 96-03761

COUNSEL: NONE

HEARING DESIRED: YES

FEB 19 1998

APPLICANT REQUESTS THAT:

He be provided entitlements for a family separation allowance, educational benefits, participation in the Montgomery GI Bill program, and early retirement.

He receive backpay and allowances and accrued leave as a result of his original General Court Martial sentence being set aside.

RESUME OF CASE:

On 10 March 1998, the Board considered and recommended partial approval of applicant's request for promotion. On 25 March 1998, the Deputy for Air Force Review Boards directed that he be provided supplemental promotion consideration to the grade of staff sergeant for all appropriate cycles beginning with Cycle 93A5. A copy of the Record of Proceedings (ROP) is at Exhibit I.

Further research with HQ AFPC/DPPPWB indicated that the applicant was supplementally considered and nonselected for promotion to the grade of staff sergeant for cycles 93A5 through 9535.

APPLICANT CONTENDS THAT:

His appellate (excess) leave should be for the period 10 Apr 92 through 7 Jan 96 instead of 10 Apr 92 through 31 Dec 94. A waiver should be granted for use of a W-2 for computation of backpay.

His accrued leave should be restored for the period 10 Apr 92 through 7 Jan 96. If this request is approved, he requests a waiver to maintain a balance in excess of 60 days and the option to use the leave as terminal leave or regular leave. He remains in a constant negative leave balance and has used many of the advanced leave days to retrieve information necessary for reprocessing to active duty.

He be permitted access to the Tuition Assistance Program and other educational benefits for a period of 4 years and 6 months

after his date of separation. Continued access to the Tuition Assistance Program and other educational benefits after his separation should be for the same period of time that he was denied the opportunity to utilize the 75% benefit afforded those on active duty.

He be permitted to utilize his former Air Force Specialty Code (AFSC) for enrollment in the Community College of the Air Force, and that he should be granted the opportunity to participate in the Montgomery GI Bill Program. He was informed that nonperformance in an AFSC for 5 years prevents its use for additional credits with the community college.

He be provided the opportunity to utilize any government program offered to personnel formerly stationed at Norton AFB or March AFB. Specifically, he is interested in the government purchasing his home in San Bernardino, CA. With the closure of March AFB, and since his reassignment to McChord AFB, WA, some assistance in selling his home in CA would be very beneficial.

He be authorized payment of Family Separation Allowance (FSA) due to the short notice he received to report to McChord AFB, WA, leaving his family in CA. Although he resides in a dormitory at McChord AFB, he essentially maintains two separate households,

He be permitted to retire earlier than 20 years without penalty. He is approximately 18 months away from a 20 year date of separation and does not wish to lose benefits, pay or entitlements.

In support of his application, he provided a personal statement and copies of documents associated with the issues cited in his contentions (see Exhibit G).

AIR FORCE EVALUATION:

The Chief, Voluntary Education Programs, HQ USAF/DPPE, stated that the Tuition Assistance Program can be used by enlisted personnel while on active duty from the date of entry through the date of discharge. Tuition assistance has never been authorized while on appellate leave. As to the Montgomery GI Bill benefits, DPPE stated that enrollment takes place when a member enters active duty. Enrollment is not retroactive. Entry into either the Veterans Education Assistance Program (VEAP) or the Montgomery GI Bill (MGIB) program is voluntary at the time of entry on active duty not at a later date. The applicant is not eligible for a GI Bill program unless new legislation is passed allowing those not enrolled a second opportunity. With regard to utilizing previous Air Force Specialty Codes (AFSC), DPPE stated that if the applicant wants to enroll in a previously held AFSC, which he no longer has through no fault of his own, he can request a waiver through the Dean, Community College of the Air Force (Exhibit J).

The **Chief, Military Compensation & Legislation Division, HQ USAF/DPPC**, stated that Title 37, U.S.C., Section 427, only authorizes Family Separation Allowance (FSA) for members whose dependents are denied movement to their new permanent duty station or a place near that station is not authorized at government expense. The applicant, for personal reasons, decided not to relocate his dependents to his new permanent duty location. The circumstances stated do not authorize payment of FSA. Regarding the applicant's inquiries about the government purchasing his home, DPPC stated that he may be eligible for benefits under the Homeowner Assistance Program (HAP). HAP eligibility is based on the termination date of a member's service at a military installation which will be or was closed or realigned under the Base Realignment and Closure (BRAC) program. Since Norton AFB, CA, was closed under the BRAC program, the applicant may be eligible for these benefits. DPPC indicated that the applicant should contact the U.S. Army Engineer District for further information (Exhibit K).

The **Chief, Retirements Branch, HQ AFPC/DPPRR**, stated that the applicant's high year of tenure is **9 March 1999**, 20 years of active service, which will give him a retirement with full benefits, retirement pay, and entitlements effective 1 April **1999**. Based on his date of separation (DOS) of 18 February **1999**, the applicant will need to extend two months to reach retirement. After carefully reviewing applicant's package and personnel records, along with the applicable laws and regulations, DPPRR does not find where an error or injustice took place which would warrant an approval of early retirement. Applicant's case does not meet the established criteria, which must be consistently applied in order to ensure fairness for all Air Force members. DPPRR stated that the enlisted early retirement program was last available until 30 October **1996**, when the program closed. Since this program has been successful over the fiscal years to meet enlisted end-strengths, it has not been necessary over recent fiscal years. DPPRR recommended applicant's request be denied (Exhibit L).

The **Chief, Claims Branch, DFAS-DE/FYCC**, stated that the applicant has not provided the requested civilian earning statements for the period 10 April **1992** through 31 December **1994** in order for DFAS-DE to process his claim for backpay. FYCC indicated that the requirement for offset of civilian earnings is in accordance with Department of Defense Financial Management Regulation. Until the applicant provides the requested information, his claim for backpay cannot be considered. As to the applicant's leave account, it will be reconstructed when he provides the required civilian earnings information. The entitlement to leave and the accumulation of leave is set forth in 10 U.S.C. 701, which stipulates that a member may not accumulate more than 60 days of leave. Due to this statutory leave limitation, all days of accrued leave in excess of 60 days will be immediately lost effective 30 September before the fiscal year in which his leave

account will be reconstructed, The leave may not be credited in the fiscal year of his leave reconstruction to avoid the loss.' FYCC stated that the applicant's military pay account shows a projected separation date of 18 February 1999. He has not sold any accrued leave in his military career and could possibly be due a settlement of 60 days of accrued leave depending on his usage of accrued leave and the reconstruction of his leave account (Exhibit M) .

Through further research, DFAS-DE/FYCC indicated that they have just recently received the required documents from the applicant and are in the process of working his claim for backpay and leave.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Copies of the Air Force evaluations were forwarded to applicant on 15 June 1998 and 6 August 1998 for review and response. As of this date, no response has been received by this office (Exhibit N) .

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.
2. The application was timely filed.
3. Insufficient relevant evidence has been presented to demonstrate the existence of probable injustice. We took notice of the applicant's complete submission in judging the merits of the case. Inasmuch as DFAS-DE is currently processing the applicant's claim for backpay and leave, we find this to be a moot issue. The applicant's contentions concerning his entitlements for educational benefits, participation in the Montgomery GI Bill program, family separation allowance and early retirement are duly noted; however, we do not find these assertions, in and by themselves, sufficiently persuasive to override the rationale provided by the respective Air Force offices. We therefore agree with the opinions and recommendations of the appropriate Air Force offices of primary responsibility and adopt the rationale expressed as the basis for our conclusion that the applicant has not been the victim of an injustice. As to the applicant utilizing his former Air Force Specialty Code (AFSC) for enrollment in the Community College of the Air Force and benefits under the Homeowner Assistance Program (HAP), we note that the respective Air Force offices have provided applicant the names of the offices he needs to contact concerning these issues. In view of the foregoing, we find no compelling basis to recommend granting the relief sought in this application.

4. The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issue(s) involved. Therefore, the request for a hearing is not favorably considered.

THE BOARD DETERMINES THAT:

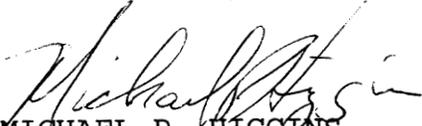
The applicant be notified that the evidence presented did not demonstrate the existence of probable material error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered this application in Executive Session on 6 October 1998, under the provisions of AFI 36-2603:

Mr. Michael P. Higgins, Panel Chair
Mr. Steven A. Shaw, Member
Ms. Ann L. Heidig, Member

The following documentary evidence was considered:

- Exhibit I. Record of Proceedings, dated 25 Mar 98, w/atchs.
- Exhibit J. Letter, HQ USAF/DPPE, dated 11 May 98.
- Exhibit K. Letter, HQ USAF/DPPC, dated 22 May 98.
- Exhibit L. Letter, HQ AFPC/DPPRR, dated 29 May 98.
- Exhibit M. Letter, DFAS-DE/FYCC, dated 4 Aug 98, w/atchs.
- Exhibit N. Letters, SAF/MIBR, dated 15 Jun 98 and 6 Aug 98.


MICHAEL P. HIGGINS
Panel Chair